

tractor objected to this clause upon satisfactory grounds and it was agreed that it should be omitted. Through a clerical inadvertence, however, the clause was left in the requisition sent to the Bureau of Supplies and Accounts and the contract was drawn embodying it, and signed by the contractor on March 2, 1905, without careful reading, the precise form having been settled as we have said. This mistake was discovered upon the arrival of several vessels at Cavite, on June 17, 1905, the attention of the Bureau of Equipment was called to it, and the Bureau of Supplies and Accounts was requested to make the necessary change, on June 23. That Bureau notified the contractor that the contract was amended by the omission of the clause. The Government refuses to recognize the amendment, the Court of Claims dismissed the claim for reformation, 49 Ct. Cls. 635, and the claimant appealed to this court.

It hardly is denied and cannot be denied successfully that in a proper case reformation of a contract may be required against the United States notwithstanding the statute that we have quoted, as it may be required notwithstanding the provisions of the Statute of Frauds. *Cramp v. United States*, 239 U. S. 221, 230. It is the contract that has been made through the agent authorized to make it that is to be reduced to writing and if a clerk or some other agent makes a mistake we perceive no reason why the writing should not be made to conform to the fact. The contract is not unlawful in the preliminary stage, or even void in a strict sense, but simply not to be enforced against the United States. *United States v. N. Y. & Porto Rico S. S. Co.*, 239 U. S. 88. The contract is made with the principal and the several steps are to be regarded as if they all had been taken by him. Here the United States made the contract by the Bureau of Equipment and by its mouth requested the Bureau of Supplies and Accounts to put it on paper and sign it.

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What the Bureau of Supplies and Accounts understood is immaterial, it simply followed the requisition of the Bureau of Equipment. There was a mistake made by a clerk in not striking out a printed clause from that requisition. It is as if a principal after making the agreement had taken a printed form and forgotten to draw his pen through the words. The failure of the contractor to read before signing an instrument the terms of which he had seen in print is not enough to debar him from seeking relief. *Equitable Safety Ins. Co. v. Hearne*, 20 Wall. 494.

The only ground for hesitation is the purely technical one that the Court of Claims, acting before the decision of *Cramp v. United States*, 239 U. S. 221, 232, and probably uncertain whether to send up facts or evidence, has not found in terms certain of the facts that we have stated. It has found that the Acting Chief of the Bureau of Equipment wrote an official letter stating them, and it has assumed them to be true in the decision that it delivered. We understand that they are not controverted if material, and therefore think it unnecessary to send the case back for further findings. The decree of the Court of Claims upon this part of the case will be reversed.

The next question that arises concerns the amount of demurrage to be allowed under the contract as reformed. Undisputed terms of the instrument were: "6. The Government guarantees but twenty (20) feet of water at coaling wharf, Sangley Point. 7. Cargo to be discharged at the rate of four hundred (400) tons per day for such part of cargo as may be necessary to discharge in the bay to enable a vessel of deep draft to go to the wharf, and six hundred (600) tons per day at wharf, Sundays and legal holidays excepted in each instance, or the Government pays demurrage at the rate of eight (8) cents per ton per day on the net registered tonnage of the vessel for any detention caused by the Government (through fault of

its own) not discharging at the above-named rates, it being understood that twenty-four (24) hours' notice of arrival of each cargo under this charter shall be given the commandant before lay days commence." (Then followed the clause stricken out by reformation.) "13. While an average daily discharge of four hundred (400) tons in the stream and six hundred (600) tons at the wharf is guaranteed, the commandant will be instructed to discharge the cargo as expeditiously as practicable with a view of exceeding these rates without working overtime." It is found that one vessel went to the wharf drawing twenty-two feet and six inches, and it is argued that if one could another could, and that under paragraph 13 just quoted, the other vessels should have been docked at that draft and thus have been enabled to deliver 200 tons more a day—that being the difference between wharf and stream. If the argument is correct it would give the claimant \$2,217.44 demurrage under the contract as reformed. But as to this it is enough to say that the Court of Claims stated that it did not find the fact of generally available depth of over twenty feet, and therefore it stands unproved in this court.

The only other point argued is that the vessels concerned should not have been required to pay tonnage dues because the Philippine Tariff Act of March 3, 1905, c. 1408, § 15, 33 Stat. 928, 976, exempts from them "a vessel belonging to or employed in the service of the Government of the United States." But it is a sufficient answer that the words do not mean every vessel that carries a ton or a cargo of coal for the Government but only one that is under the control of the United States as explained in *New Orleans-Belize S. S. Co. v. United States*, 239 U. S. 202, 206. The ground of the exemption is to prevent interference with Government agencies. But an independent carrier, such as the contractor was in this case, is not such an agency, and is not employed in the service of the

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Government within the meaning of the law. See *Baltimore Shipbuilding Co. v. Baltimore*, 195 U. S. 375, 382. Upon the last two points the judgment of the Court of Claims is affirmed.

*Judgment reversed.*

MR. JUSTICE McREYNOLDS took no part in the consideration and decision of this case.

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